COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts	)	D.T.E. 01-31 (Phase II)

REPLY COMMENTS OF VERIZON MASSACHUSETTS

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Verizon Massachusetts ("Verizon MA") submitted its Alternative Regulation Plan ("Compliance Plan") on June 5, 2002, in compliance with the Department's Order in Phase I of this proceeding. D.T.E. 01-31 – Phase I (May 8, 2002) ("*Phase I Order*"). The procedural and substantive objections contained in the comments filed by intervenors are without merit. The procedural objections, designed to delay the completion of the Department's consideration of the Compliance Plan, can, if deemed necessary by the Department, be addressed without resort to protracted additional proceedings. The substantive objections either seek reconsideration of decisions made by the Department in the *Phase I Order* or are outside the scope of the proceeding. Accordingly, the Department should approve the Compliance Plan because it satisfies the Department's directives in the *Phase I Order* and approve the Compliance Plan.[1]

[1] Upon approval of the Compliance Plan, Verizon MA will file compliance tariffs to implement those provisions of the Compliance Plan that require immediate rate or tariff changes.

I. SUMMARY OF VERIZON MA COMPLIANCE PLAN

Verizon MA's Compliance Plan reflects the Department's conclusion in the *Phase I Order* that there is sufficient competition in Massachusetts to grant Verizon MA upward pricing flexibility for its business services. *Phase I Order*, at 91. The Department also permitted Verizon MA to exercise downward pricing flexibility for business services, subject to additional price-floor policies that protect competitors against any "price squeeze" potential. *Id.* Consistent with the Department's findings, Verizon MA's Compliance Plan establishes full pricing flexibility to set prices at market-based rates for most business services. Under the Compliance Plan, when Verizon MA makes a filing to decrease rates for any of these Business services, Verizon MA will include an analysis showing that the Department's price floor requirements have been satisfied.

Verizon MA's Plan includes a calculation of UNE-based rates for Public Access Lines ("PAL") and Public Access Smart Lines ("PASL"),[2] collocation and special construction. *Phase I Order,* at 94. The Department directed Verizon MA to file a proposal for a pricing regime based on UNE requirements for these services.

For Residential Services, Verizon MA's Compliance Plan follows the Department's tentative conclusions regarding the proper regulatory regime for Basic and Non-Basic Residential services. Under the Compliance Plan, rates for Residential Basic Services will continue to be price-regulated, while Non-Basic Residential Services will continue to be accorded pricing flexibility. Price increases for Residential Basic Services

2 For the reasons described in response to the comments of the New England Public Communications Council ("NEPCC") in Section II.C, *infra*, the Department may wish to make a final decision of the PAL/PASL rates based on the record developed in D.T.E. 97-88/18 (Phase II) ("*Payphone Docket*").

(*e.g.*, Dial-Tone, measured/unlimited, Suburban, Metropolitan, Circle, Expanded Community) are limited to 5 percent annually. Prices for Residential Non-Basic services will continue to be set in response to market conditions. In addition, in accordance with the *Phase I Order,* the Compliance Plan increases the average Residential Dial-Tone Line rate in order to offset the net revenue loss for the elimination of the TouchTone rate and for reductions in Switched Access charges and price changes associated with specific retail services that are primarily used by competing carriers, such as PAL and PASL.[3]

The Department determined that Verizon MA may be granted pricing flexibility for Private Line services if Verizon MA chose to reduce Intrastate Special Access rates to UNE levels. *Phase I Order*, at 92. Because such a reduction would result in significant potential for arbitrage between state and federal Special Access services, Verizon MA chose to forego the option of obtaining pricing flexibility for Private Line services at this time, thereby continuing to offer these services subject to price regulation. Prices for Private Line services will be limited under the Compliance Plan to an overall increase of 15 percent annually.

Given the existence of a robust and highly competitive market for telecommunications services in Massachusetts, Verizon MA does not believe that there is a need for the Department to impose retail service standards and penalties on any carrier, including Verizon MA. It is time for the Department to permit Verizon MA to compete on equal terms with other carriers, none of whom is subject to service standards. However, if the Department decides it is necessary to impose a Service Quality Plan it should continue the Service Quality Plan adopted by the Department in D.P.U. 94-50

[3] The Compliance Plan increases the LifeLine credit for eligible customers to offset the Residential Dial-Tone Line rate increase.

with an adjustment to the penalty mechanism. The payment methodology would be adapted for the elimination of the indexed price-cap formula, which no longer exists. In its place, a one-time credit to all residential and business lines would be made on an annual basis.

II. VERIZON MA RESPONSE TO COMMENTS

A. Attorney General

1. Procedural Issues

The Attorney General claims that the *Phase I Order* altered the course of the bifurcated investigation by making "tentative conclusions" on issues that the Department had previously stated in its orders on scope would be addressed in Phase II of the proceedings (Attorney General Comments, at 6). According to the Attorney General, the Department's tentative conclusions are not based on record evidence, and rather than mere "guidance," appear to be a Department directive not subject to comment by the parties (*id*., at 7). The Attorney General suggests that the Department should establish a procedural schedule for the filing of testimony, discovery, evidentiary hearings and briefs (*id*., at 8).[4]

The Attorney General is in error when he suggests that the Department's tentative conclusions are not based on record evidence. The Department's tentative conclusions regarding the degree of competition, as well as its other findings, were fully supported by the evidentiary record in Phase I and the Department's extensive body of precedent and the expertise developed by the Department over years of regulating the evolving telecommunications market.

[4] AT&T also states that "further process, including filings, discovery and potentially hearings, if necessary, are required to understand Verizon MA's filing (AT&T Comments, at 15).

Verizon MA's Compliance Plan is clear, comprehensive, and in full compliance with the Department's *Phase I Order*. To the extent the Attorney General and other parties raised questions about the Compliance Plan in their comments, this reply provides any needed clarification. Given the extensive record already compiled in the Phase I proceeding, no further evidentiary proceedings should be required.

However, if the Department nevertheless wishes to afford parties more process than they are due, a streamlined proceeding could be established on the following schedule:

- August 1 — Deadline for Discovery Questions
- August 15 — Intervenor Prefiled Testimony filed[5]
- September 9 — Verizon MA Rebuttal Testimony filed
- September 15-17 — Evidentiary Hearings (if necessary)
- October 1 — Initial Briefs
- October 8 — Reply Briefs.

2. Attorney General Substantive Comments on the Compliance Plan

In addition to raising a concern about process, the Attorney General also suggests that there are issues associated with various portions of the Compliance Plan. The Attorney General's suggestions, however, are without merit.

The Attorney General questions the accuracy of Verizon MA's $59 million estimate of lost revenues from access charges, PAL and PASL (Attorney General Comments, at 9). Verizon MA's Compliance Plan fully documents this calculation in Tab B of the compliance filing, and the Attorney General has provided no basis to

[5] Verizon MA's initial case consists of: (1) the terms of the Compliance Plan; (2) the explanation and calculations contained in the Compliance Plan's filing package; and (3) these comments.

challenge the accuracy of this calculation. The Attorney General's question as to the accuracy of the calculation is therefore without merit.

The Attorney General suggests that Verizon MA's monthly proposed increase to residential customers that is required to offset lost access revenues may actually be allowing Verizon MA to *over-recover* these lost access revenues (assuming 2.75 million residential customers) (Attorney General Comments, at 9). The Attorney General's argument is without merit because he has incorrectly computed the number of residential access lines by failing to exclude the LifeLine subscribers. The LifeLine customers would be credited with an amount that offsets the additional revenues identified by the Attorney General. *See* Tab B, Attachment 1, Workpaper 1.

The Attorney General also questions whether the 5 percent annual rate increases for Basic Residential Services without prior Department approval is just and reasonable (Attorney General Comments, at 9). However, the Department has addressed this issue in its *Phase I Order*, concluding that the 5 percent increase is in line with (i) previous Department rulings regarding the need for rate rebalancing; and (ii) the historical annual change in the Consumer Price Index. *Phase I Order*, at 102-103.

According to the Attorney General, notwithstanding the Department's finding of sufficient competition, Verizon MA must demonstrate the need to eliminate the service quality plan adopted in D.P.U. 94-50 (Attorney General Comments, at 10). The Attorney General contends that Verizon MA should not be permitted to reduce the financial disincentive for providing "substandard" service to customers (*id*.). In fact, the Attorney General suggests that the Department consider adding *new* service quality metrics, such as those that measure digital subscriber line ("DSL") service quality (*id*.). The Attorney

General's suggestion to continue the service quality plan adopted in D.P.U. 94-50 is off-the-mark. The evidence, introduced in Phase I, of the greatly increased level of competition for telecommunications services in Massachusetts indicates that the market will discipline all participants, including Verizon MA, to provide the highest quality customer service. Poor service quality will lead to loss of market share and consumer confidence. There is no justification to impose this requirement on only Verizon MA.[6]

Nonetheless, in the event that the Department determines that the continuation of a service quality plan for retail services remains appropriate for Verizon MA, a different basis must be used to credit customers for performance below threshold levels because the existing payment methodology is based on an indexed price cap formula, which will no longer exist. The changes proposed by Verizon MA under this alternative do nothing more than alter the payment mechanism to reflect the fact that the price-cap index has ended. The existing Retail Service Quality Plan has worked well for many years; Verizon MA's service has been excellent with only minimal instances of substandard performance. No justification has been presented to change that plan or increase further the number of metrics for individual services such as DSL.

The Attorney General asserts that the elimination of the separate charge for Residential TouchTone service may result in the mandatory payment for this "unwanted" service (Attorney General Comments, at 11). However, the Company's proposal is fully consistent with Department precedent regarding the elimination of a separate charge for TouchTone service. More than a decade ago, the Department considered the

6 The Attorney General's suggestion that the Department establish a service-quality metric for DSL is particularly inapt because retail DSL service is provided under federal jurisdiction in accordance with a federal tariff. *See* Tariff F.C.C. No. 20, Section 5, Part III.

circumstances in which the elimination of the separate TouchTone charge would be appropriate:

> To the extent that subscription to a service like touch tone (or any other supplemental service) becomes so widespread as to be considered basic service to most customers . . . [i]t may be appropriate to eliminate the separate charge altogether and make the service part of basic exchange service.

N*ew England Telephone and Telegraph Company*, D.P.U. 89-300, at 146-147 (1990). TouchTone service no longer reflects what may once have been thought of as a new "space-age" technology. *Phase I Order*, at 105, fn.66 ("Verizon [MA] should also include its proposed elimination of charges for residential Touch Tone service"). It is now time to acknowledge the ubiquitous customer use of TouchTone service and incorporate it as part of basic residential service, as it has been for basic business. *See* D.T.E. 99-102 (2000).

The Attorney General questions whether the increase in LifeLine credits for Verizon MA's 163,000 subsidized customers is calculated correctly (Attorney General Comments, at 11). However, the calculation of this credit is demonstrated in Tab B, Attachment 1, Workpaper 1 of Verizon MA's filing, and the Attorney General identified no issue, error or omission in this calculation. Accordingly, his comments are without merit.[7]

According to the Attorney General, Verizon MA has not adequately explained the need for repricing its collocated Flexpath digital service lines now offered under DTE

[7] The Attorney General's question about whether credits should be extended to Link-Up programs is not germane to Verizon MA's filing in this proceeding because the Link-Up program provides subsidies to *one-time* connection charges and the proposed Verizon MA changes to residential rates relate only to *monthly charges* that are offset through the LifeLine credit.

Tariff No. 10 (Attorney General Comments, at 11). The Attorney General's questions about whether the proposed Flexpath collocation repricing is justified and what its effect will be on Verizon MA revenues are fully addressed in Tab B, Attachment V, and the compliance filing at pages 6-7. As indicated in the filing, in compliance with the *Phase I Order*, Verizon MA will convert the existing Flexpath collocation circuits provided to carriers from Tariff DTE No. 10, Section E to Tariff D.T.E. No. 17. Converting the charges for the circuits to Tariff DTE No. 17 rates produces a revenue reduction of $15,925 (Tab B, Attachment V).

The Attorney General suggests that Verizon MA's residential customer class may be facing discrimination as a result of Verizon MA's rate increase for residential Dial-Tone/Touch-Tone (Attorney General Comments, at 11-12). According to the Attorney General the rate increase is being implemented for the purpose of offsetting reductions in Access rates that would have been paid by *both* business and residential customers (*id.*). The Attorney General's comments are without merit. In the *Phase I Order*, the Department concluded that existing above-cost intrastate Access Service revenues should no longer subsidize *residential* dial tone rates. *Phase I Order*, at 63. According to the Department, one necessary consequence of reducing intrastate Switched Access charges "is that the revenues from access services that used to subsidize residential dial-tone rates must be made up by increasing residential dial-tone rates . . .". *Id.*, at 63. Verizon MA's proposed residential rate adjustment is fully consistent with the Department's findings in the *Phase I Order*.

B. AT&T Comments

1. Special Access Pricing

AT&T claims that Verizon MA's Plan violates the Department's *Phase I Order* by not pricing Intrastate Special Access services at UNE rates (AT&T Comments, at 2-4). According to AT&T, the *Phase I Order* required that Special Access be priced at UNE rates, and that there was no opportunity given to Verizon MA to adopt UNE pricing only if Verizon MA elected to adopt pricing flexibility for intrastate Private Line services (*id.*, at 3-4).[8] AT&T objects to Verizon MA's proposed 15 percent increase in its Private Line service rates, while at the same time stating that it would be "hard for AT&T to oppose a Verizon increase in the market price for private line services" (*id.*, at 4-5). AT&T analysis is incorrect and Verizon MA's Compliance Plan complies with the Department's directives in the *Phase I Order* with respect to Private Line and Special Access.

Verizon MA sought Department approval for pricing flexibility for analog and digital Private Line services without conditions. The Department denied Verizon MA's request, concluding that:

> The supply elasticity for private line services (Verizon [MA]'s retail and CLECs' special access services) has not proven to be high enough to permit granting Verizon [MA]'s request.
>
> ***
>
> The Department determines that Verizon [MA] *may*, consistent with G.L. c. 159, be granted pricing flexibility with regard to private line services, but *only after* rates for special access services are moved to UNE-based levels . . .

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8 WorldCom's comments on Verizon MA's Compliance Plan were limited to the issue of Special Access pricing and mirrored the comments of AT&T, as described *supra*, on this issue (WorldCom Comments, at 1-2). Therefore, Verizon MA's comments in reply to AT&T also respond to the comments made by WorldCom.

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> the Department determined that Verizon [MA] *will be* granted upward pricing flexibility with regard to private line services *only after* special access services are moved to UNE-based pricing . . .

Phase I Order, at 62, 91, 92 (emphasis added). Therefore, the *Phase I Order* requires that Intrastate Special Access be priced on a UNE basis only if Verizon MA elects to go forward with the Department's condition on the implementation of Private Line pricing flexibility. By declining to accept the Department's conditions, Verizon MA is under no requirement to re-price its Intrastate Special Access rates. The words "*only after*" means that only if and when Verizon MA proposes to move Special Access to UNE rates would it be permitted pricing flexibility for Private Line services. The language used by the Department contemplates the possibility that Verizon MA would not move Special Access rates to UNE-based pricing.

Further, as indicated in Verizon MA's Compliance Plan, the condition that the Department set for Private Line pricing flexibility raises a significant potential for arbitrage between state and federal Special Access services (Compliance Plan, at 3). The FCC has refused to permit carriers to replace Interstate Special Access with UNEs. A reduction of Intrastate Special Access rates to UNE levels presents a strong incentive to tariff shop and improperly convert Interstate Special Access services to Intrastate Special Access services, at UNE-based rates. This would conflict with both Department and FCC policies and could seriously erode Verizon MA's over $350 million in Interstate Special Access revenues. AT&T's comments are silent with respect to the significant potential effect such arbitrage would have on Verizon MA's special access revenues. Accordingly, Verizon MA's election not to obtain pricing flexibility for its Private Line services in light of the condition imposed by the Department is reasonable, and Verizon MA's Compliance Plan fully complies with the requirements of the *Phase I Order*.[9]

2. <u>Use of UNEs To Compete for Private Line and Other Business Services</u>

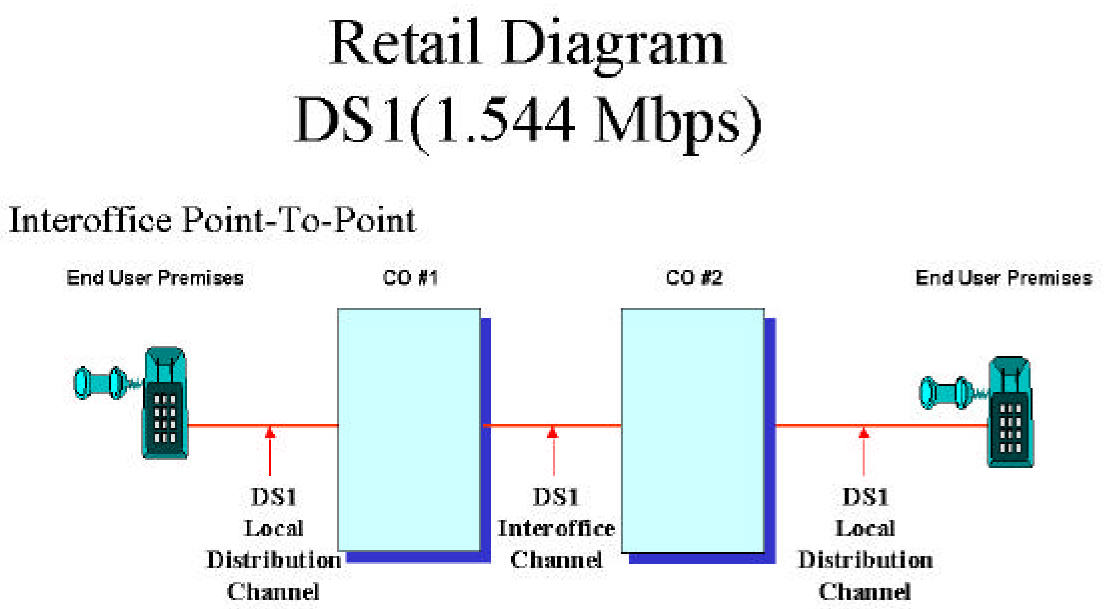
AT&T disputes Verizon MA's claim that all business services (other than administrative services) are contestable using UNEs (AT&T Comments, at 6-9). According to AT&T, many of the vertical services that Verizon MA claims can be provided through UNEs require AT&T to satisfy Verizon MA's UNE "use restrictions," thereby preventing AT&T from competing with Verizon MA's Private Line and other business services (*id.*, at 7-9). AT&T claims that because Verizon MA will not build UNEs when "no facilities" are available, Verizon MA must demonstrate that the UNEs necessary to serve contestable markets are indeed available to AT&T and other CLECs (*id.*, at 9). AT&T argues that Verizon MA should not be permitted to relitigate the issue of whether AT&T and other CLECs must use Verizon MA's Special Access circuits, rather than UNEs to offer competitive Private Line services (*id.*, at 5-9).

AT&T's contentions concerning the unavailability of UNEs to compete with Verizon MA's Private Line and other business services are without merit. AT&T and all other CLECs *can* use UNEs to provide Private Line and other local services.

Private Lines are dedicated, non-switched facilities connecting one customer's premises with another premises via one or more central offices. Below is a schematic

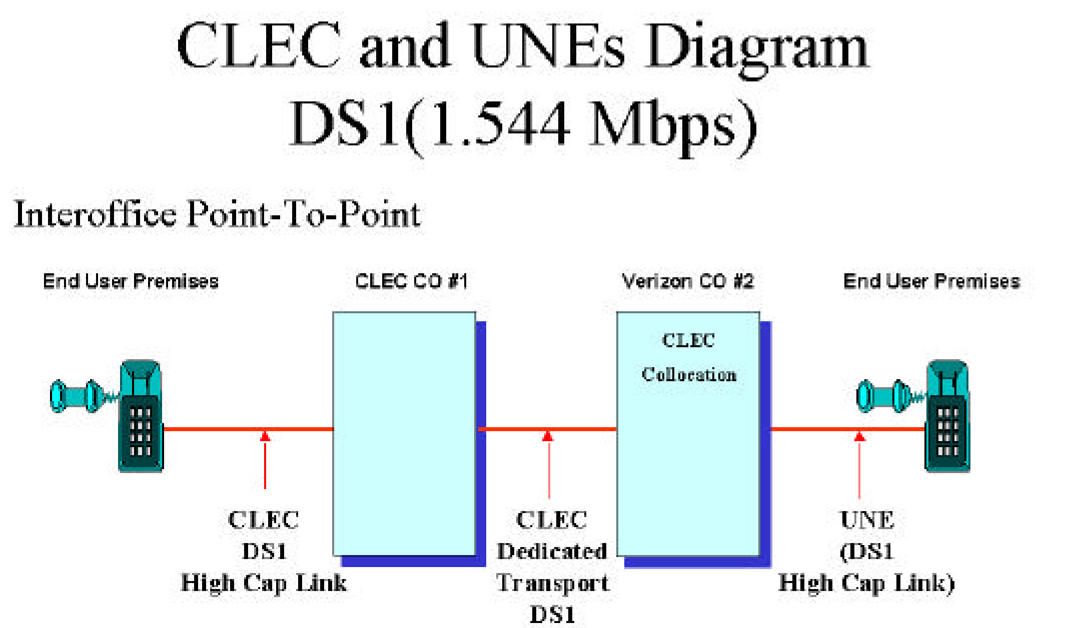
9 Although AT&T objects to Verizon MA's proposal that prices for Private Line services be limited under the Compliance Plan to an overall increase of 15 percent annually, AT&T itself recognizes the need to increase Verizon MA's retail Private Line rates (AT&T Comments, at 4). Verizon MA's proposal for this regulated service is a reasonable element of the Compliance Plan.

diagram showing a typical way in which Verizon MA provides retail Private Line services:

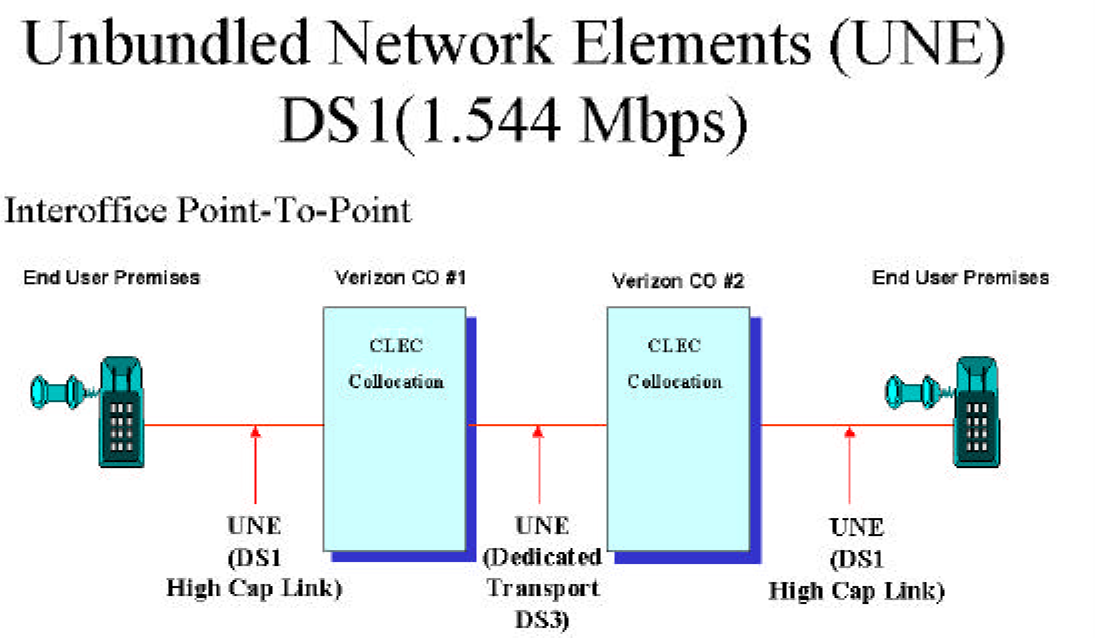


The two end-user premises are connected with each other using a Private Line service consisting of a DS1 local distribution channel connecting the end-user to Verizon MA's Central Office No. 1, transported to Central Office No. 2 via a Verizon MA DS1 Interoffice Channel. At Central Office No. 2, the Private Line is connected to the end-user premises at the other end of the circuit using a DS1 local distribution channel.

Using standard available UNEs, either alone or in combination with CLEC-provided facilities, Private Line service can be totally replicated by a CLEC. For example, as shown in the "CLEC and UNEs Diagram" below, the two end-user premises are connected to create a Private Line service that is composed of a Verizon MA UNE (*i.e.*, the DS1 high-capacity link) and CLEC-owned facilities, which include: (i) a CLEC DS1 high capacity link; and (ii) a CLEC dedicated transport connecting CLEC Central Office No. 1 with Verizon Central Office No. 2:



Similarly, as shown in the Unbundled Network Elements diagram below, Private Line service can be replicated by a CLEC who chooses to provide the service relying exclusively on Verizon MA UNEs. In this scenario, the two end-user premises are connected through the use of two Verizon MA UNE DS1 high-capacity links to the CLEC's collocation arrangements in Verizon Central Offices Nos. 1 and 2. The two collocation arrangements are then connected by a Verizon UNE transport that consists of a DS3 dedicated transport fiber facility, thereby establishing a complete Private Line circuit through the use of Verizon MA UNEs:



The fact that AT&T elects to provision its retail local services to certain business customers using Special Access facilities (which are designed for the provision of toll services), rather than UNE facilities, does not negate AT&T's (or any other CLEC's) ability to choose, in the alternative, to provide those local services using Verizon MA's UNE facilities or through a combination of AT&T's own facilities and Verizon MA's UNEs. In response, AT&T argues simply that the FCC's requirements for conversion of Special Access circuits to UNE facilities (*i.e.*, the so-called "use restrictions") are overly restrictive.

There are no "use restrictions" on a CLEC's access to UNE Loops or Transport for the purpose of providing local Private Line service. The "use restrictions" to which AT&T refers have been established by the FCC to provide a restriction on interexchange carriers from converting Special Access services to combinations of UNE Loops and UNE Transport ("EELs") unless the CLEC is using the combination to provide a significant amount of local exchange service. Supplemental Order Clarification, FCC 00-183, CC Docket No. 96-98, at ¶ 5 (rel. June 2, 2000) ("*Supplemental Order Clarification").*[10] AT&T's dispute is not with the viability of the Private Line service configurations described above, but rather with its inability to convert *existing* Special Access services to UNEs because of the FCC's "use restriction" requirements. AT&T does not mention that the restrictions were designed by the FCC to protect against the elimination of Universal Service contribution included in Special Access rates and that AT&T's inability to meet those restrictions is a function of the significant use they make of those facilities for the provisioning of toll services. *See UNE Remand Order*, at ¶ 489. AT&T's stated inability to comply with these requirements does not negate the fact that UNE facilities can and are being used by CLECs to provision intrastate retail services to business customers. Put simply, UNEs that are used by CLECs for the provision of local retail services to business customers *have no use restrictions*. Indeed, AT&T's insistence that their Special Access circuits should and must be converted to UNEs through a pricing change (in spite of existing FCC local-use conditions on making such conversions) is an admission that UNEs *can* be used for the purpose of competing with Private Line and all other local services.

AT&T's suggestion that Verizon MA's "no facilities" limitation inhibits AT&T's ability to compete with Verizon MA using UNEs is similarly without merit. The absence of available facilities for use as UNEs would place AT&T or any CLEC requesting such

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[10] The "use restrictions" and "safe harbor" rules were established in the FCC's *UNE Remand Order*, *Supplemental Order* and *Supplemental Order Clarification*. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Notice of Proposed Rulemaking, FCC 99-238, CC Docket No. 96-98 (rel. Nov. 5, 1999) ("*UNE Remand Order"); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order, FCC 99-370, CC Docket No. 96-98 (rel. Nov. 24, 1999) ("*Supplemental Remand Order*"); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, FCC 00-183, CC Docket No. 96-98 (rel. June 2, 2000) ("*Supplemental Order Clarification").*

facilities in exactly the same competitive environment as Verizon MA. If a facility does not exist, it does not exist for all market participants.

3. Price Floors

According to AT&T, the relevant price floor is not the cost of UNEs that a competitor may purchase from Verizon MA, but rather "the cost that Verizon [MA] itself incurs in the provision of the service" (AT&T Comments, at 10). AT&T maintains that Verizon MA should ensure that the price it seeks covers the UNE cost of all the elements Verizon MA uses in the provision of the service, and not just the UNEs that a competitor may purchase from Verizon MA to provide the same service (AT&T Comments, at 10). AT&T maintains that the non-UNE portion of the price floor associated with providing a service should be calculated by using the "wholesale discount" and not Verizon MA's "retail overhead" (*id.*, at 11). AT&T disagrees with the Compliance Plan's conclusion that price floor rules established by the Department in D.P.U. 94-185 remain in effect, except as modified by the Department in the *Phase I Order (id.*). At a minimum, according to AT&T, Verizon MA should be required to specify which services are subject to the price floor rules in D.P.U. 94-185, and which services are subject to the price floor rules in the *Phase I Order*, with all parties given the opportunity to contest Verizon MA's specifications (*id.*, at 12).

The Compliance Plan's language with respect to price floors implements the requirements of the *Phase I Order*, which is intended to avoid a price squeeze between Verizon MA's retail rates and the wholesale elements *used by* CLECs to compete with the relevant business retail service (*see Phase I Order*, at 90 (Department seeks to prevent price squeeze with respect to UNE-based CLECs)). The Compliance Plan states:

> When [Verizon MA] makes a filing to decrease rates for a Business service, Verizon MA will include an analysis of the relevant UNE charges for a competitor providing a comparable service plus a retail overhead.

(Compliance Plan, at 5). AT&T is mistaken in interpreting this language to mean that the calculation of Verizon MA's price floor may somehow not include *all* UNEs necessary to provide a competitive service by a UNE-based CLEC. Consistent with the Department's *Phase I Order*, Verizon MA will calculate the price floor using *all* UNE charges needed by a UNE-based CLEC to provide a comparable service "plus a retail overhead". The embedded costs of Verizon MA itself associated with providing the same service are not at issue or relevant in establishing a proper price floor.

AT&T's assertion is incorrect that the Compliance Plan's price floor structure, which maintains the existing price floors established by the Department in D.P.U. 94-185, except as modified by the *Phase I Order*, is not contemplated by the language of the *Phase I Order*. The pricing flexibility approved by the Department in the *Phase I Order* is limited to Verizon MA's retail business services. *Phase I Order*, at 91 ("the Department will require a UNE-based price floor for Verizon [MA]'s business services that are contestable on a UNE basis (citation omitted)"). The Department altered the relevant price-floor test (*i.e.*, UNE-based floor, plus a retail mark-up) if Verizon MA seeks to reduce prices for a service for which additional pricing flexibility had been permitted because of the presence of UNE-based competition. However, the Compliance Plan reasonably concludes that the price-floor requirements for other retail services (*e.g.* those established in D.P.U. 94-185), are left unaffected by the Department's *Phase I Order*. This conclusion is consistent with the Department's *Phase I Order,* which anticipates that existing price floor rules will continue to be effective until further

Department investigations are completed. Indeed, the Department anticipated that its first investigation after the filing will examine residential rates and what changes, if any, are needed to the residential price floor calculation. *Phase I Order*, at 103.

The establishment of different price floor methodologies for different competitive circumstances is consistent with Department precedent that establishes a relevant price floor on a case-by-case basis. For example, the Department held that the price floor for retail toll services should be established by imputing the price of switched access charged to interexchange carriers plus the marginal cost of related overhead. *Bell Atlantic Massachusetts*, D.T.E. 94-185-E, at 1 (2000), *citing New England Telephone and Telegraph Company*, D.P.U. 89-300 (1990); D.P.U. 94-50 (1995). Nothing in the *Phase I Order* disturbs that ruling. Similarly, it would not be appropriate to apply a UNE-based price floor to a customer-specific plan ("CSP") that is being offered in response to a full, facilities-based competitive alternative. In such a case, the relevant price floor would be the marginal cost of that service. D.P.U. 94-185, at 16 (1996). The price floor for Centrex service is also based on the service's marginal cost, as reported in the most recent marginal cost study. *See New England Telephone*, D.P.U. 94-50, at 205-206 (1995); *Bell Atlantic Massachusetts*, D.P.U./D.T.E. 97-67, at 14-15 (1998).

The Department's precedent makes clear that there simply is no "one-size fits all" approach to the development of appropriate price floors, and there is nothing in the *Phase I Order* that would alter the Department's approach to determining the application of price floors. In some circumstances, the newly articulated price floors announced in the *Phase I Order* may provide the relevant test; in other circumstances, the existing rules established in D.P.U. 94-185 would apply. Verizon MA is under an obligation to demonstrate that it meets the relevant price-floor requirement if it reduces Business rates or proposes CSPs. In such filings, Verizon MA must show that the proposed rates exceed the relevant price floor. For Residential rates, the Department has stated explicitly that it intends to consider whether UNE-based price floors are appropriate. Until such review is completed, the existing price-floor rules, established in D.P.U. 94-185, continue to apply.

Accordingly, the language contained in the Compliance Plan, which indicates that the price-floor rules established in D.P.U. 94-185 apply, unless modified by the *Phase I Order*, is appropriate and in compliance with the terms of the *Phase I Order*.

4. Reduction to Switched Access Rates

AT&T states that the Department should order immediate implementation of Verizon MA's proposal to bring its intrastate Switched Access rates to interstate levels, but in Phase II the Department should develop a record to establish cost-based intrastate Switched Access rates (AT&T Comments, at 13). AT&T's suggestion is not consistent with the Department's *Phase I Order*, in which the Department directed only that Switched Access charges be set equal to interstate switched access rate levels. *Phase I Order*, at 63. Lowering Switched Access rates to the interstate level (and the corresponding increase in Residential Dial-Tone rates to offset the revenue loss) are included as part of the overall Compliance Plan at the express direction of the Department in the *Phase I Order*. *Id.*[11] There is no need for the Department to lower the rates apart from implementation of the entire plan. However, if the revenue subsidy is to be removed, the remainder of the Compliance Plan, including the offsetting rate increases

[11] Consistent with the Department's long-established ratemaking principles, the Department has sought to decrease rates for access service, and conversely to increase residential dial tone rates. *See IntraLata Competition*, D.P.U. 1731, at 19-24 (1985); *New England Telephone*, D.P.U. 93-125, at 20-21 (1994).

must be simultaneously implemented to prevent a revenue shortfall. AT&T's suggestion to adopt new intrastate Switched Access rates immediately, without implementing offsetting rate increases at the same time, would be inequitable and potentially confiscatory. Further, there is no basis for adopting AT&T's suggestion to require new cost studies be performed in *Phase II* to address Intrastate Switched Access charges. The Department's *Phase I Order* addressed the inefficiencies associated with those rates by eliminating the differential between intrastate and interstate switched access rates. This is achieved in the Compliance Plan, and there is no indication that the preparation and review of expensive cost studies would in any way further the Department's objectives.

5. Service Quality Standards

AT&T suggests that the Department should investigate the relationship between Verizon MA's retail Service Quality Plan and the C2C wholesale metrics, as well as Verizon MA's data collection and reporting under the Service Quality Plan (AT&T Comments, at 14-15). AT&T's proposed investigation is unnecessary and should be rejected by the Department. AT&T does not challenge the conclusion that Verizon MA's Service Quality Plan has worked well for many years. If anything, the evidence in *Phase I* of this case strongly suggests that Massachusetts is at the point where competitive forces, rather than additional regulatory penalties, are sufficient to discipline Verizon MA. AT&T has failed to demonstrate any reason to investigate further the existing service quality structure at this time.

C. New England Public Communications Council, Inc.

NEPCC limits its comments to Verizon MA's proposed Public Access Line and Public Access Smart Line UNE-based rates. NEPCC contends that Verizon MA's proposed PAL and PASL UNE-based rates must be evaluated by the Department in the context of the FCC requirements and the Department's ruling in D.P.U./D.T.E. 97-88/97-18 (Phase II) (NEPCC Comments, at 1-2). According to NEPCC, Verizon MA's PAL and PASL rates do not satisfy the FCC or Department requirements in the *Payphone Docket* (*id*., at 1-10). NEPCC maintains that if the Department is to approve such PAL rates in this proceeding, it should adopt the rates proposed by the NEPCC in the *Payphone Docket* (*id*., at 10).

In the *Phase I Order* the Department identified certain services, such as PAL and PASL, that are in the nature of wholesale services for which there was insufficient evidence concerning the level of competition for these services to grant Verizon MA pricing flexibility. *Phase I Order*, at 94. The Department required Verizon MA to calculate UNE-based rates for PAL and PASL services and Verizon MA's Compliance Plan is responsive and in full compliance with this directive. The Department, however, has a separate pending investigation in the *Payphone Docket* that includes an extensive and detailed record on the precise question of whether Verizon MA's PAL and PASL services comply with FCC and Department requirements. As reflected in Verizon MA's filing in the *Payphone Docket*, Verizon MA's currently effective PAL and PASL rates comply with all FCC requirements for such rates under Section 276 of the Telecommunications Act. Therefore, as a matter of administrative efficiency and the elimination of duplication, the Department may be better served by addressing PAL and PASL rate issues directly in the *Payphone Docket*, where an extensive and complete record has already been developed and a decision is now pending before the Department. There is little benefit to addressing PAL and PASL rates in Verizon MA's Compliance Plan in *Phase II* in light of a pending docket that has already been established to examine

PAL and PASL rate compliance with FCC requirements under Section 276 of the Telecommunications Act. Verizon MA would incorporate the results of the Department's Order in the Payphone Docket into its overall alternative regulation plan in Massachusetts.

III. CONCLUSION

For the foregoing reasons, Verizon MA respectfully requests the Department to approve the Alternative Regulation Plan submitted in compliance with the Department's *Phase I Order.*

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